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**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

DANIEL STEWART,)	1:08-CV-256 AWI
)	
Petitioner,)	(No. 05-cr-97 AWI)
)	
v.)	
)	ORDER ON PETITIONER'S 28
UNITED STATES OF AMERICA,)	U.S.C. § 2255 PETITION
)	
Respondent.)	(Doc. Nos. 24 & 25)
<hr style="width: 45%; margin-left: 0;"/>		

Pursuant to a plea agreement, Petitioner pled guilty to one count of 18 U.S.C. § 924(c). See Court's Criminal Docket Doc. Nos. 19, 20. On February 27, 2006, Petitioner was sentenced to 60 months confinement and 60 months supervised release. See id. at Doc. No. 21. Judgment and commitment were entered on March 2, 2006. See id. at Doc. No. 22. Petitioner did not file an appeal. On February 19, 2008, Petitioner filed this 28 U.S.C. § 2255 petition. See id. at Doc. No. 24. On May 22, 2009, the Court issued an order to show cause why the petition should not be dismissed due to a failure to file within § 2255's one year limitations period, as it appeared that 28 U.S.C. § 2255(f)(1) applied and that Petitioner had missed the deadline by about one year. See id. at Doc. No. 26. Petitioner's response was due on June 25, 2009. As of the date of this order, Petitioner has filed no response to the show cause order. Because Petitioner has failed to respond to the order to show cause, the Court can only conclude that 28 U.S.C. § 2255(f)(1)

1 applies and that this petition is untimely. The Court must deny the petition. See 28 U.S.C. §
2 2255(f)(1); United States v. Schwartz, 274 F.3d 1220 (9th Cir. 2001).

3
4 Accordingly, IT IS HEREBY ORDERED that Petitioner's 28 U.S.C. § 2255 petition is
5 DENIED and the clerk is ordered to CLOSE this case.¹

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7 IT IS SO ORDERED.

8 **Dated: July 2, 2009**

/s/ Anthony W. Ishii
CHIEF UNITED STATES DISTRICT JUDGE

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28 ¹Petitioner also filed a motion to proceed in forma pauperis. Given the resolution of the section 2255
petition, the pauperis motion is moot.